

Serial No: 10/500,306

GONZALEZ et al.

PF 53175/PP

REMARKS

Claims 14-17, 19-21, and 23-25 are currently pending in the application. Claims 18 and 22 have been canceled as they were withdrawn from consideration by the Examiner.

The Examiner has rejected claims 14-17, 19-21 and 23-25 under 35 USC §102(b) as being anticipated by Gonzalez et al. (WO 03/056061).

It should be noted that WO 03/056061 is the publication document of the corresponding International Application of the present Application, and was filed under the International file number PCT/EP02/14784. Therefore, the present application corresponds fully with the wording of WO 03/056061.

The Examiner takes the position that Gonzalez et al. is available as a prior art reference because the filing date of the current application is January 12, 2005, which is beyond the 18 months period from the filing of the PCT application (December 27, 2002), and also beyond the 30 months period from the foreign priority filing date of December 27, 2001.

The Examiner's position is in error. Applicants respectfully direct the Examiner's attention to MPEP §1893.01(a)(1), wherein it is indicated which submissions are required by 30 months from the priority date in order to begin entry into the national stage. See also 37 CFR 1.495(b). As stated, the required submissions are (1) a copy of the international application and (2) the basic national fee. See 37 CFR 1.495(b)(1)-(2); MPEP §1893.01. The Office will notify any applicant if other parts of the application have been omitted, which can later be submitted, such as the inventor oath or declaration. 37 CFR 1.495(c).

The Applicants on June 28, 2004 submitted, inter alia, the copy of the international application as well as the basic national fees.¹ This was within the 30 month deadline. The Office confirmed this in the Notification of Missing Requirements mailed to the Applicants on December 13, 2005, which is also available on PAIR and in the Applicants' file.

However, apart from satisfaction of the 30 month submission requirement is the date upon which examination of the application is taken up. Only when international

¹ Please note that June 27, 2004 was a Sunday, and therefore filing on June 28, 2004 was appropriate.

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applications have complied with the requirements of 35 USC §371(c) will they be taken up for examination. 37 CFR §1.496(b); 37 CFR §1.491(b); MPEP §1893.03(b). Furthermore, the application is taken up for action based on the date on which the 35 USC §371 requirements were met. The Applicants made the required submissions to satisfy 35 §371(c), and the Office has stated the requirements were met on January 12, 2005, which is can also be referred to the §371 date.

Therefore, although the 35 USC §371 date of January 12, 2005, may be beyond 30 months from the priority date, the Applicants did make the required submissions within the 30 month deadline and so are entitled to all the benefits of priority under the PCT. This includes a PCT filing date of December 27, 2002 and foreign priority filing date of December 27, 2002. Therefore, Gonzalez et al. cannot be available as a prior art reference under §102(b) because it was published on July 10, 2003, which is after the PCT filing date.

Furthermore, it should be noted that WO 03/056061 is the publication document of the corresponding International Application of the present Application, and was filed under the International file number PCT/EP02/14784. Therefore, it is not surprising that the wording of the present Applicatin is in full correspondence with the wording of WO 03/056061.

In light of the foregoing, the Applicants respectfully request favorable action and that the §102(b) rejection be withdrawn.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,
NOVAK DRUCE DELUCA & QUIGG, LLP

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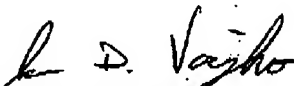
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